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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

IRA A. DAVES,

Case No. CV 08-07376-CAS(AGR_x)

Plaintiff,

FIRST AMENDED COMPLAINT

VS.

[Pursuant to 42 U.S.C. Sections 2000e *et seq.*, as amended]

JURY TRIAL DEMANDED

ERIC H. HOLDER, JR., Attorney
General of the United States.

Defendant.

This First Amended Complaint is based on Daves' personal knowledge and upon information and belief.

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JURISDICTION & VENUE

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1. This suit is for damages and injunctive relief under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, as amended. This Court therefore has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States.

2. This Court may properly assert personal jurisdiction over the parties in this case. Daves resides in Los Angeles, California, and he submits to this Court's jurisdiction. The United States Attorney for the Central District of California ("USAO"), where Daves is employed, is also located in this judicial district.

3. Venue is proper under 28 U.S.C. § 1391(b). All or most of the events or omissions giving rise to Daves' claims occurred in this judicial district.

THE PARTIES

The Plaintiff: AUSA Ira Daves

4. Daves is currently employed as an Assistant United States Attorney ("AUSA") in the Civil Division of United States Attorney's Office for the Central District of California (the "USAO"). The USAO is an agency and instrumentality of the federal government and is subject to the laws of the United States. The United States Attorneys and their assistants serve as the nation's principal litigators under the direction of the Attorney General. Each United States Attorney is the chief federal law enforcement officer of the United States within that particular jurisdiction. United States Attorneys

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1 conduct most of the trial work in which the United States is a party, including prosecuting
2 and defending civil cases in which the United States or one of its agencies is a party.

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4 **The Defendant: U.S. Attorney General, Eric Holder**

5 5. Defendant Eric H. Holder, Jr. ("Defendant") is the Attorney General of the
6 United States. He heads the Department of Justice ("DOJ"). Holder is substituted under
7 Fed.R.Civ.P. 25(d) for Michael B. Mukasey, the former Attorney General, who was
8 originally named as the Defendant in this action. The DOJ is an agency and
9 instrumentality of the federal government and is subject to the laws of the United States.
10 The Executive Office for United States Attorneys ("EOUSA") is an agency and
11 instrumentality of DOJ and is also subject to the laws of the United States. EOUSA was
12 created to provide for close liaison between DOJ and the United States Attorneys Offices
13 throughout the country. During the relevant time periods, EOUSA was charged with,
14 among other duties, providing general executive assistance and supervision to USAO.
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19 **INTRODUCTION**

20 6. Daves has worked for approximately fourteen years as a civil litigator in the
21 USAO. His practice has focused on employment discrimination ("Title VII") cases.
22 When Daves was first hired, he was told that working for the USAO would be the best job
23 he ever had, and for years he believed it was. For years, the managers at USAO told
24 Daves that he was one of its top civil trial attorneys. He was treated as though his advice
25 was wanted and well-received. He felt genuinely valued as an employee and colleague.
26 He was provided adequate administrative support. He enjoyed a good rapport with
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1 management. He consistently obtained excellent results in the cases he handled for the
2 office and its client agencies. Through most of his tenure, he enjoyed his job. Daves was
3 proud to serve as a Civil AUSA, and he received numerous accolades for his many
4 accomplishments.
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6 7. Over time, unfortunately, Daves' relationship with management gradually
7 changed. The shift began when Daves sought to challenge management on certain
8 minority issues, such as the under-representation of African-American and Hispanic males
9 in the office. The shift became more pronounced when Daves sought to expand his
10 practice and develop expertise in areas outside the limited field of Title VII. Although
11 USAO made a show of continuing its support of Daves, his persistence in exploring ways
12 in which to best serve the needs of the office while concurrently improving work
13 conditions in the office and expanding his practice area had the effect of unsettling and
14 upsetting management, which wanted, because of certain personal biases, to preserve the
15 status quo and restrict Daves' significant work experience to Title VII cases almost
16 exclusively.
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21 8. Management was willing occasionally to assign Daves simple cases outside
22 Title VII, but it ultimately became clear that heavy-duty, non-Title VII work was being
23 reserved for other attorneys and was off-limits to Daves. In time, because Daves would
24 not acquiesce in the unfair restriction being placed upon him and because he continued his
25 efforts to improve working conditions and opportunities for minorities and other
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1 historically disadvantaged groups, the support that he previously received from his
2 managers—so essential to an attorney’s career—dissipated and then disappeared.

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4 9. Since Daves’ initial requests to increase his development opportunities by
5 expanding his practice area, Daves’ supervisors, all of whom reported directly to the Civil
6 Chief, uniformly and without good reason denied him meaningful work outside of Title
7 VII. These same supervisors praised his work. One supervisor wrote glowingly in one of
8 Daves’ performance appraisals, for example: “Ira possesses outstanding legal research
9 and writing skills. His written work is thorough, timely, and forceful.” “Ira is
10 exceptionally thorough in the development of his cases. He serves as a resource to the
11 office in the area of Title VII litigation in which he specializes. These cases are factually
12 complex and highly emotional.” “Ira is exceedingly effective in his case management and
13 brings systemic problems to the immediate attention of his supervisors.”
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17 10. Despite such consistently favorable comments throughout his 14-year tenure,
18 Daves’ supervisors never permitted or even asked him to train a new attorney in litigation,
19 even for a Title VII case. They denied him these opportunities even as they told him that,
20 as a senior attorney, he was expected to mentor and assist junior attorneys. The rare dual
21 assignment Daves was afforded with a junior AUSA was only at Daves’ repeated request
22 and typically only in an emergency.
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25 11. At the same time, no such restrictions were placed on the vast majority of
26 Daves’ similarly situated AUSAs, most of whom were white. The Civil supervisors have
27 given numerous if not nearly every one of these other civil AUSAs, junior and senior
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1 attorneys alike, a meaningful and wide variety of challenging, career-enhancing
2 assignments, including non-emergency dual assignments intended to train and assist
3 newer attorneys.
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5 12. When Daves asked his managers why they insisted that he continue to focus
6 on Title VII, in isolation and without any significant interaction with junior attorneys,
7 management gave various responses that seemed plausible at the time. At the same time,
8 management repeatedly assured Daves that there was no reason he would not someday be
9 assigned the kinds of cases he had been requesting. Daves believed his managers. But
10 unknown to him, they had started secretly trying to find some articulable basis to deny
11 Daves' requests permanently.
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14 13. On January 31, 2008, management told Daves that it now had that articulable
15 basis. The Civil Chief held a disciplinary-type meeting in which he informed Daves that
16 he had uncovered deficiencies in Daves' performance dating back "a year or two." The
17 Civil Chief further informed Daves that those performance deficiencies now precluded
18 Daves from being assigned to the kinds of non-Title VII cases he had been requesting for
19 years.
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22 14. Daves was blindsided. Before the January 31st meeting, his managers had
23 never told about these alleged performance problems, so he had no opportunity to address
24 them before his managers had made their decision. In fact, just a few days earlier, Daves
25 had received his annual performance appraisal, and he again received the highest possible
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1 overall rating. Consequently, management's justification for the decision to formalize the
2 denial of equal treatment was highly suspect.

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4 15. Yet additional information was conveyed to Daves at the January 31, 2008
5 meeting. In an environment in which EEO lawyers at EOUSA were disproportionately
6 African-American, the Civil Chief specifically and unequivocally told Daves that he had
7 been hired as "a Title VII lawyer," which is inconsistent with what Daves was told when
8 he was offered the position. The import of the meeting was that, in his managers' view,
9 Daves was a "Title VII lawyer" and would remain one as long as he worked in Civil.
10 Daves, who had devoted some of his most productive working years to litigating cases for
11 the Civil Division of the USAO, was demoralized.

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14 16. Management's decision had a decided nexus to race and gender bias, as well
15 as punishment for employment activity protected by Title VII. For thirteen of the fourteen
16 years that Daves has worked for USAO, he was the only African-American male
17 employed in General Civil. It was not until the year 2008, after Daves appealed
18 management's decision through EEO channels, that a second African-American male was
19 hired. Daves also is openly gay. And, throughout his career, Daves sought chances to
20 thrive within the office at the same time that he pursued changes that would improve it.
21 To that end, Daves engaged on multiple occasions in Equal Employment Opportunity
22 ("EEO") activities, such as implementing measures designed to increase diversity within
23 the office, all of which were intended to improve the working conditions within the office
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1 and fortify the USAO's stated mission as an Equal Opportunity employer. It was those
2 EEO activities that constituted protected forms of expression under Title VII.

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4 17. The events of January 31, 2008 compelled Daves to realize—reasonably and
5 for the first time—that the difference in the treatment he had received in terms of his case
6 assignments and other job opportunities was, in fact, due to unlawful discrimination and
7 retaliation for some or all of his prior EEO activities. In a work environment where white
8 and more recently Asian attorneys were routinely and aggressively hired, mentored, and
9 promoted by an all-white management team over the few equally qualified African-
10 American and Hispanic attorneys who have dedicated many years of exemplary service to
11 the office, the insinuation that the sole African-American male attorney that had been
12 hired in over a decade did not have the mettle for heavy-weight litigation outside the
13 single area of employment discrimination was patently offensive.

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17 18. On January 31, 2008, Daves reasonably concluded, for the first time and with
18 great disappointment, that persons of influence within USAO management—particularly
19 the supervisors who had long managed the Civil Division—shared the unflattering,
20 unsupported, and unsupportable view that it was all but impossible to find and hire
21 qualified African-American and Hispanic male attorneys. Daves also concluded that
22 management had relied on its distorted, race-based view of his abilities to perpetuate and
23 excuse decades of apathy and neglect in recruiting, training, retaining, and promoting
24 these men. Daves reasonably concluded that management's view of African-American
25 and Hispanic females was similarly distorted. Finally, Daves reasonably concluded that
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1 management harbored unflattering stereotypes about the leadership potential of people
2 such as Daves, whom they felt did not conform to racial and gender stereotypes.

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4 19. Without knowing or suspecting it, Daves entered the USAO reporting to and
5 trying to impress a number of influential managers who harbored biases against two of the
6 historically disadvantaged groups to which he belongs. From the start, the default
7 assumption for Daves, in the minds of these supervisors, has been that he is somehow not
8 as good as his similarly situated white counterparts, that his aptitude for first-chairing
9 high-exposure cases outside Title VII is somehow inferior to theirs, that he is, by
10 comparison, no more than minimally or questionably competent.

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13 20. In the year following the January 31, 2008 meeting, management has firmly
14 stuck by its adverse decision yet has declined to offer Daves any evidence supporting the
15 offensive default assumption on which it was implicitly based. Moreover, other AUSAs,
16 particularly white males, have not been comparably disadvantaged. In direct
17 contravention of well-established Title VII principles, Daves has been steadfastly denied
18 an equal chance to succeed or fail based on his individual merits.

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21 21. It was very difficult, if not impossible, for USAO management and their
22 direct reports at EOUSA to admit any wrongdoing. Their legitimacy as employment
23 authorities within DOJ would have been questioned and their ability to exercise discretion
24 in the future would have been undermined. Therefore, when Daves first complained to
25 the appropriate DOJ officials about unlawful discrimination, he was met not with
26 pronounced interest or concern but with resistance, which reinforced Daves as *persona*

1 *non grata* in the office. Soon thereafter, and in direct response to the complaint Daves
2 lodged with their superiors at USAO and EOUSA, Daves' managers commenced
3 carefully coordinated steps designed not only to punish, silence, and discredit him, but
4 also to deflect attention away from their past and present discriminatory practices.
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6 22. In particular, the managers of Civil—all of whom have enjoyed lengthy
7 careers in government and who were acting in flagrant self-interest to protect their
8 reputations at the expense of a hard, honest evaluation of the facts—enjoyed personal and
9 professional relationships with high ranking officials both within USAO and at EOUSA.
10 Faced with the charges Daves leveled regarding unlawful conduct, these managers relied
11 upon these relationships to bolster their own credibility and thwart any meaningful
12 investigation of the issues raised by Daves' complaint.
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15 23. The collusion crystallized during the administrative processing of Daves'
16 complaint. The EEO office of the EOUSA, to which USAO management also reports,
17 unduly delayed commencing any investigation for six months. The investigator it finally
18 assigned to the matter was adversarial and gave the matter only cursory attention. In a
19 response to a complaint that focused on disparate treatment in case assignments and other
20 job opportunities, for example, Daves was required to produce proof of facts as
21 inconsequential as overseas plane travel he took in the year 2007, while Civil
22 management wasn't even asked, let alone required, to produce a single document
23 demonstrating and explaining their assignment practices. In this way, and in others,
24 management-level officials at the USAO and EOUSA worked collectively and
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1 aggressively to undermine Daves' efforts to investigate the systemic problems alleged in
2 his complaint, perhaps the ultimate form of retaliation.

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4 24. The other forms of retaliation Daves has experienced since he first contacted
5 EEO in February 2008 have been skillful, relentless, and continue to this day. In the year
6 after he filed his original complaint, to list a few examples: management has repeatedly
7 passed Daves over for career-enhancing assignments, has given him one rookie
8 assignment after another, has played a series of administrative pranks on him each of
9 which was designed to occupy his work time and undermine his morale, has bad-mouthed
10 him and segregated him from his colleagues, and most recently has even tried to set him
11 up for a swift, just-cause termination.

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14 25. Because of these concerted efforts to punish and silence him, Daves' health
15 has deteriorated. He was forced recently to take a leave of absence, at his doctor's advice.

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17 26. The lack of effective self-regulation by the USAO and EOUSA makes
18 judicial intervention imperative. With Title VII, Congress intended to address
19 discrimination arising from an imbalance of power and an abuse of that imbalance that
20 targets certain groups. Although there has been a recent change in administration, with
21 the November 2008 election of Barack Obama, such an imbalance still exists in the
22 USAO's Civil Division in Los Angeles and, upon information and belief, at higher levels
23 within the USAO and EOUSA. This discrimination and retaliation deprives Daves and
24 others like him of the right to participate on a level playing field with their peers. This
25 matter is now ripe for strict judicial scrutiny.

FACTS

27. As the U.S. Supreme Court observed in *Oncale v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75, 81-82 (1998), “The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed.” For this reason, Daves sets forth the facts in detail:

Daves’ Career as an AUSA

28. Daves received his J.D. from Harvard Law School, where he as an editor of the *Harvard Law Review*. After law school, Daves clerked for the Hon. Alfred T. Goodwin of the U.S. Court of Appeals, Ninth Circuit.

29. After three years as an associate at O’Melveny & Meyers, Daves accepted an offer to join the USAO as an AUSA in October 1995. Daves joined the USAO in part because he believed in the USA’s obligation to “do justice”: the USA must not only zealously represent its clients (the federal government and its various agencies), it also has an obligation to ensure that justice is served and that the cause of justice is advanced.

30. The docket of a civil AUSA consists of defending federal agencies and federal employees in all kinds of civil lawsuits. Thus, when he was hired, Daves was told that he serve as a general civil litigator. He was told that he must be willing and able to prosecute or defend any kind of civil case.

31. Over the last 14 years, Daves has established an exemplary record, as attested to by multiple supervisors, clients, fellow AUSAs, and support staff with whom he has

1 worked. During most of that time, Daves was proud to work for the USAO and was
2 willing to place the office's interest above his own, even at the expense of his own
3 immediate career goals. He did as he was told, got favorable results in the vast majority
4 of his cases—which were mostly Title VII cases—and Daves was repeatedly rewarded for
5 his hard word and effective advocacy.
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8 32. Daves has been recognized with numerous commendations, including one
9 that Leon W. Weidman—the Chief of the Civil Division throughout Daves' tenure—
10 called “one of the most impressive commendations letters I have ever received.” Daves
11 has received multiple honors, including a Special Achievement Award for Sustained
12 Superior Performance of Duty. He received a highly coveted nomination for a Director's
13 Award because, according to the U.S. Attorney at that time, Daves deserved “nationwide
14 recognition for his superior performance.” Soon after the nomination, the U.S. Attorney
15 assigned Daves to assist the DOJ in a high-profile pattern-and-practice investigation of a
16 local police department.
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20 33. That pattern-and-practice investigation was a decade ago. Since then, Daves'
21 career at the USAO has steadily stalled, eventually reaching a dead-end. Daves hit this
22 dead-end because of a disagreement with his managers over the types of cases Daves is
23 qualified to handle versus the types of cases they're willing to give him. The types and
24 complexity of cases that an AUSA handles largely determines his career in the USAO, so
25 this dispute raises fundamental questions about Daves' present and future marketability
26 and earnings potential, particularly in these difficult economic times.
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1 34. Throughout his employment at the USAO, Daves has engaged in EEO
2 activities, formal and informal. These activities include recruiting minority attorneys
3 through his service on the USAO's hiring committee, serving as the office's Special
4 Emphasis Program Manager responsible for representing minority interests to
5 management, giving deposition testimony in connection with a co-worker's Equal
6 Employment Opportunity ("EEO") complaint, voicing disapproval of the office's
7 ostensibly neutral but effectively discriminatory policies and practices with respect to the
8 hiring of externs, criticizing management's case assignment practices to DOJ auditors,
9 and filing the EEO complaint underlying this action.
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13 35. After contentedly devoting his first several years to Title VII cases, Daves
14 tried to expand his areas of substantive experience by working on substantial cases in
15 other areas in addition to his Title VII cases. Yet Daves' managers consistently refused to
16 assign him substantial or important cases other than Title VII. This refusal arises from his
17 managers' prejudice—conscious, unconscious, or some combination of both.
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20 36. Daves' managers offered various reasons for confining Daves to Title VII,
21 reasons that seemed plausible at the time and that Daves understandably accepted. Daves
22 was told, for example, that there was a shortage of attorneys who had the ability or
23 experience to handle Title VII cases, which were among the most difficult cases in the
24 office and which therefore required Daves' particular training and expertise. Daves
25 accepted that explanation until he started noticing that most of the newest, least
26 experienced attorneys in the office were routinely assigned Title VII cases. When he
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1 pressed the issue, management offered other reasons, all of which seemed credible at the
2 time.

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4 37. Daves' managers occasionally would assign him simple cases outside Title
5 VII. Daves accepted these cases without complaint, thinking that his managers would one
6 day assign him tougher ones. Once Daves became a senior litigator in the office, all but a
7 few of his assignments were cases that could have been assigned to junior attorneys but
8 were instead assigned to Daves. These were dead-end assignments. Further, many of
9 these cases were pending in the Eastern and Southern Divisions of the Central District,
10 which forced Daves to spend a disproportionate amount of his time traveling to the federal
11 courthouses in Riverside and Santa Ana.
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14 38. Similarly situated AUSAs outside of Daves' protected classes did not have
15 the same or similar degree of Title VII duties, long-distance travel, or other case-related
16 burdens that Daves' managers repeatedly imposed on him. Moreover, in a profession that
17 places a premium on attorneys who can litigate any case, many if not most of Daves'
18 fellow Civil AUSAs routinely received—often from the moment they were hired—a wide
19 array of weighty assignments, which they litigated individually or as dual assignments
20 with other AUSAs. In the case of experienced AUSAs, dual assignments would
21 team them with less experienced attorneys, who received training by virtue of the
22 partnering.
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26 39. Other times, experienced attorneys would be called upon to assist attorneys
27 who had equal or more experience, including supervisors, at trial or in pre-trial
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1 preparation. There were occasions when white male attorneys with no prior Title VII trial
2 experience were asked to assist colleagues in Title VII trials. In contrast, Daves was
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4 never asked to provide any such assistance—not once in 13 years, not even in Title VII
5 trials. When Daves was not assigned a Title VII case, he was regularly given rookie-level
6 assignments. This freed up other, apparently favored, attorneys to litigate more important
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8 matters, through which their development into seasoned, well-rounded civil litigators was
9 assured.

10 40. Opportunities to advance in the Civil Division were—and remain—few and
11 far between. When they arise, candidates for promotion are required to demonstrate a
12 wide variety of skills for litigating complex cases and for managing other attorneys.
13 These skills cannot be developed or demonstrated through the kinds of teeth-cutting cases
14 that Daves was repeatedly assigned over the years.
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17 41. A few examples of the complex cases that Daves' colleagues were typically
18 assigned: a *Bivens* case involving shootings by federal officials; a complex, multi-
19 defendant commercial litigation involving allegations of trademark infringement, unfair
20 competition, and interference with prospective business advantage; a case under the
21 Voting Rights Act challenging the outcome of city-wide elections; an environmental case
22 involving the construction of wharfs; a civil suit seeking to enjoin businesses from
23 operating on protected Indian reservations; and multiple medical malpractice cases
24 involving severe injuries, such as retinal detachments and spinal displacements.
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1 42. Daves' managers resisted his efforts to address this disparate treatment.
2 Instead of honestly and fairly responding to his concerns, Daves' managers took pre-
3 emptive action to avoid and, if necessary, defend against a future formal charge of
4 discrimination. They began to impose on Daves a series of secret tests through which
5 Daves could ostensibly prove himself. These obstructions were designed to concoct a
6 pretext for refusing to assign Daves complex cases outside Title VII.
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9 43. Although unaware that he was essentially being set-up, Daves did everything
10 asked of him. For example, one of these tests was a last-minute Ninth Circuit argument
11 that Daves handled for a colleague who had a scheduling conflict. The Civil Appellate
12 Chief reported to her colleagues that Daves' performance was "magnificent."
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14 44. One reasonably would have expected management to respond to Daves'
15 success by assigning him the cases he had been requesting. But that did not happen.
16 Instead, management continued to look for reasons not to assign these cases to Daves.
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18 45. Upon information and belief, management's plan was implemented with
19 acquiescence from, if not the express concurrence of, executive members of the Front
20 Office at USAO and upper-level officials at EOUSA. To the extent these high-ranking
21 officials relied upon information, it came from Daves' supervisors. These officials did not
22 consult with Daves or, upon information and belief, review his performance in any
23 meaningful way to determine whether Daves' managers had a legitimate basis for
24 implementing their plan.
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1 46. Daves could not have known that management was manufacturing a pretext
2 for denying him the opportunities that his track record had earned him because
3 management's decision-making process was secret. The particulars of most of
4 management's actions, such as the factors on which management based a promotion
5 decision, remained confidential. Line attorneys were not provided such information, and
6 it would not have been provided had it been requested. Any charge of racism, sexism, or
7 retaliation necessarily would have to be based on inference and educated guesswork.
8 Also, based on the favorable comments the Civil managers continued to give him, Daves
9 reasonably believed that he enjoyed good, honest relationships with his managers.
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11 47. For instance, during a private discussion with the Chief of the Civil Division,
12 Leon W. Weidman, Daves asked if there was anything he needed to do to be assigned
13 more substantial cases outside Title VII. Weidman assured Daves that there was no
14 problem, that Daves needed do nothing more to get the cases he had been requesting for
15 so long, and that it was just a matter of time before Daves would receive such
16 assignments. Through their confidential—and, Daves mistakenly thought, honest—
17 exchanges, Chief Weidman lulled Daves into trusting him. Chief Weidman later used the
18 information he gathered during these private discussions and other conversations to
19 bolster his pretext for denying Daves the assignments he had been requesting and, by all
20 objective indications, had fairly earned.
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22 48. On January 31, 2008, Weidman finally disclosed his previously hidden
23 intentions. In an official, closed-door meeting that lasted two-and-a-half hours, Chief
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1 Weidman told Daves that he had made a decision about Daves' future assignments. In
2 the presence of Daves' direct supervisor, Chief Weidman told Daves that, for reasons that
3 had come to his attention over the course of the past year or two, he would no longer
4 consider Daves for the types of complex cases outside Title VII that Daves had long been
5 requesting, absent improvement in Daves' performance.
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8 49. Throughout the meeting, Chief Weidman was demeaning and hostile. He
9 described Daves as arrogant and insufficiently grateful for the numerous Title VII and *pro*
10 *per* cases that he had been assigned. He attacked Daves for taking notes, even though he
11 had previously invited Daves to take notes during the meeting. Whenever Daves tried to
12 present his side of events or defend himself, Chief Weidman cut him off. He called Daves
13 "bright" but said—in a moment of inaccurate historical revision—that he had hired Daves
14 as "a Title VII lawyer."
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17 50. Daves was blindsided. Before the meeting, Daves had never been told of
18 performance problems that were sufficient to deny him cases outside of Title VII. Now,
19 Chief Weidman claimed to have found some over the preceding year or two.
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21 51. When Daves objected that Chief Weidman had never before mentioned these
22 alleged deficiencies, Chief Weidman blurted, "*I'm telling you now!*" Rather than provide
23 specific facts, Chief Weidman mentioned vague "communication" problems and
24 "numerous complaints" lodged against Daves, to which he had personally responded over
25 the past year or two. Chief Weidman said: "You have no idea how many times I've had
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1 to defend you.” When Daves asked for specifics, Chief Weidman demurred, declining to
2 identify the complainants or reveal any particulars.

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4 52. Upon information and belief, Chief Weidman refused to provide the
5 particulars because there were none to give. Only days before the January 31st meeting,
6 Daves had received—again—the highest possible performance rating for his work in the
7 prior year. A year or two of complaints requiring Chief Weidman’s personal intervention
8 would not have supported the rating that Daves had just received.

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10 53. Daves’ direct supervisor remained silent throughout most of the meeting.

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12 54. The January 31st meeting was a seminal event in Daves’ career as an AUSA.
13 Chief Weidman admitted that neither he nor Daves’ direct supervisor had bothered to
14 outline before the meeting the specific goals and objectives that they had already put in
15 place. Thus, they effectively denied Daves a fair chance to satisfy the secret expectations
16 they had expected him to meet. Indeed, in the preceding year or two, when the complaints
17 were purportedly pouring in, Chief Weidman had not bothered to tell Daves that he was
18 being watched closely and that Daves’ failure to correct perceived problems would result
19 in corrective disciplinary action. For Daves, the entire episode was humiliating.

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22 55. Chief Weidman had thus based his adverse decision on Daves’ purported
23 failure to meet goals and objectives that he had been kept secret from Daves. To this day,
24 those goals, objectives, and expectations remain vague and largely unspecified. Moreover,
25 neither Chief Weidman nor any other manager has raised the issue again. No one has
26 even mentioned to Daves his purported shortcomings or the secret standards that Chief
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1 Weidman first presented to Daves at the January 31st meeting, which took place more than
2 a year ago. To this day, Daves has no idea whether management has retracted the
3 decision or continues to expect Daves to improve his performance according to the secret
4 standards to which Chief Weidman alluded during the meeting.
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6 56. On January 31, 2008, Daves realized for the first time what was happening.
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8 The inconsistencies and contradictions underlying Chief Weidman's decision were not the
9 product of innocent managerial error. Upon information and belief, under Chief
10 Weidman's direction and apparently with support or acquiescence from the Front Office,
11 Daves' managers had been taking steps to keep Daves where they wanted him—on the
12 front line of the federal government's defense in employment discrimination cases and off
13 the fast-track for promotional opportunities. As Chief Weidman put it at the January 31st
14 meeting, Daves was a "Title VII lawyer," nothing more.
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17 57. The designation "Title VII lawyer" has a particular historical significance in
18 the federal government. In 2008, nearly every attorney-advisor in the EEO department of
19 EOUSA was African-American. Given that, the term "Title VII lawyer" could reasonably
20 be understood as a code word for "black lawyer." The intent to discriminate was thus
21 implicit in Chief Weidman's comment. Use of that particular phrase in the context of
22 justifying case restrictions conveyed the message, particularly when viewed from the
23 perspective of a black man who had spent years in a mostly white work environment, that
24 black attorneys like management considered Daves and persons like him discrimination
25 lawyers, that they were suited for nothing else and nothing more, that they were not full
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1 and equal members of the workplace who should be allowed the opportunity to try any
2 case, however complex or outside their prior area of training or expertise, thus justifying
3 management's decision to restrict their opportunities.
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5 58. Chief Weidman's decision—which he said was made after consulting “HR”
6 and his superiors in the Front Office—revealed management's previously hidden intent to
7 prevent Daves' development in favor of other, similarly situated attorneys whom Chief
8 Weidman and other supervisors preferred. Accordingly, while experienced white male
9 attorneys were given career-enhancing assignments, some of them dual assignments with
10 less experienced attorneys, to handle high-exposure *Bivens* cases, for example, Daves and
11 other disfavored attorneys were relegated to more routine cases and encouraged to apply
12 for extra-curricular work outside the office.
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15 59. In addition to these other acts of discrimination, Daves was denied a
16 promotion to which he was fairly entitled. Chief Weidman also made negative comments
17 about Daves when Daves applied for a magistrate judgeship.
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20 60. Even if discriminatory choices like these were a reflection of clients'
21 preferences, that fact would not excuse this discrimination because client preferences
22 based on race or gender stereotypes are not a “bona fide occupational qualification” under
23 Title VII.
24

25 A History of Discrimination in the USAO

26 61. The DOJ purports to be “committed to providing a focused EEO program
27 that prevents and eliminates discrimination and ensure equality in the workplace. DOJ
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1 has issued additional statements expressing its commitment to equal opportunity, such as:
2 “Effective recruitment and outreach efforts support the Department’s critical mission of
3 ensuring fair and impartial administrative of justice for all Americans.” Unfortunately,
4 the history of minority representation in the Civil Division of the USAO in Los Angeles
5 suggests otherwise.
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7
8 ~~62. In the Civil Division’s history, there has been only one minority supervisor,~~
9 an Asian male. Chief Weidman, a white male, has served as the Civil Chief for over 16
10 years. The First Assistant Chief is also a white male, and his tenure has been longer than
11 Chief Weidman’s. As a practical matter, the Civil Division’s two top managers hold
12 positions that are tantamount to lifetime appointments. They demand and receive
13 substantial deference from their subordinates, including supervisors who report to them.
14

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16 63. The management of the General Civil section of the Civil Division also
17 includes four Assistant Division Chiefs and one Civil Appellate Chief. These Assistant
18 Division Chiefs include two white males and three white females. Three of these
19 Assistant Division Chiefs have have tenures as supervisors approaching and perhaps
20 exceeding 20 years.
21

22
23 64. All General Civil supervisors report directly to Chief Weidman. The Civil
24 Appellate Chief also serves as one of the two initial points of contact for employee
25 grievances, including EEO complaints. The prior Civil Appellate Chief was also a white
26 female. Both women received their promotions to the Appellate Chief position during
27 Chief Weidman’s tenure.
28

1 65. When Chief Weidman and his male deputies started in the office in the 1980s
2 and 1990s, there were few minority attorneys, if any. Female attorneys were similarly
3 rare. From October 1995 to January 2008, the Civil Division hired at least 12 white males
4 and seven white females. During that same time period, the Civil Division hired no more
5 than a handful of Asian attorneys—most most of them in the last few years—two
6 Hispanic women, and one African-American woman. And during that same period,
7 attrition among minority AUSAs was disproportionately high: whereas most white
8 attorneys in General Civil remained in their positions for at least seven years, most of the
9 minority attorneys resigned from or transferred out of General Civil within two to four
10 years.
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14 66. From the time that he joined the USAO in 1995 until early 2008, Daves was
15 the only African-American male in General Civil. Upon information and belief, before
16 Daves joined the office, there had been only one other African-American male attorney to
17 work in General Civil, and he transferred to the Criminal Division before he passed away.
18 It wasn't until 2008 that Civil management hired another African-American male—a
19 graduate of Yale Law School—to work in General Civil. Thus, for thirteen of his
20 fourteen years in the office, Daves was the sole African-American male attorney.
21 Furthermore, both of the African-American males hired into General Civil were from Ivy
22 League law schools. In contrast, the vast majority of Caucasian attorneys in General
23 Civil—including supervisors—were not. Although graduating from an Ivy League law
24 school does not make someone a better attorney, this fact suggests that the managers in
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1 the Civil Division are imposing on African-American men and other disfavored groups
2 higher standards that they do not impose on other, favored groups.

3
4 67. Dating back 25 years, no African-American, male or female, has ever held
5 the post of U.S. Attorney for the Central District.

6 68. Hispanic males have been similarly under-represented. From the time Daves
7 was hired as an AUSA in 1995, General Civil has employed no Hispanic male attorneys.

8
9 Daves believes that, before he was hired, only one Hispanic male attorney had been hired
10 to work in General Civil. That attorney left the office before Daves started. The only
11 other Hispanic male attorney hired to work in the Civil Division was placed in the Asset
12 Forfeiture section, which historically employed a disproportionately higher percentage of
13 African-American attorneys. Indeed, Chief Weidman initially offered Daves a position in
14 Asset Forfeiture, which Daves declined.
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17 69. At the USAO, people of African-American and Hispanic descent have been
18 historically employed in disproportionate numbers as support staff, janitors, and security
19 guards. This has been especially true for African-American and Hispanic men.
20

21 70. The Civil Division has an externship program, to which students from
22 accredited law schools throughout the country apply. The externship program provides an
23 excellent recruitment tool for the office. In fact, a number of AUSAs who ultimately
24 received offers of full-time employment were identified through the program. Yet
25 African-American and Hispanic attorneys have rarely been hired as externs. Out of
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1 probably more than 150 externs hired over a 13-year period, perhaps only two or three
2 have been African-American or Hispanic.

3
4 71. Merit-based awards are critical for career advancement, both within and
5 outside the office. Few African-American or Hispanic attorneys had been nominated for
6 Director's Awards.

7
8 72. As a result of poor or non-existent retention efforts, attrition among African-
9 American and Hispanic attorney has been disproportionately high.

10
11 73. A number of AUSAs have been promoted during Weidman's tenure as Chief
12 of the Civil Division. Of the various promotions, all but one have gone to white females.

13
14 74. Executive positions in the Front Office are the top-ranking positions at the
15 USAO. During the time that Daves has been in the office, no African-American has held
16 an executive position in the Front Office. During Daves' tenure, no minority has ever
17 held a management-level AUSA position in the Civil Division. Similarly, during Daves'
18 tenure, no African-American, male or female, has ever been promoted to a supervisory
19 administrative position.
20

21
22 75. The discrimination evidenced by these facts is underscored by comments that
23 have been made to Daves or about Daves. During his initial interview for the position,
24 Daves inquired about promotional opportunities. He was told flat out that there were
25 none. At times, unflattering comments were made about Daves' personality. He has been
26 chided for his work ethic even though he gets in earlier than most of his counterparts and
27 puts in a full day. He has been referred to in ways that were intended to irk him and raise
28

1 questions about his masculinity. He was once told that he was “fungible.” He was also
2 once told that management would not give him a tough med mal case. After 11 years as
3 an AUSA, Daves was told that a simple *pro per* prisoner case was “in line” with where he
4 was in his development. He was once admonished for not doing his own secretarial work..
5 When he first started, he was called “crazy” for expressing an interest in doing Title VII
6 cases.
7

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9 76. Other minorities have been similarly overlooked or mistreated. Some
10 examples: An African-American female attorney with years of experience in the Civil
11 Division was denied an opportunity to pursue a lateral transfer to the Civil Fraud Unit,
12 until she complained that the open position had not been advertised. Before her transfer
13 out of General Civil, this African-American attorney, like Daves, had been given a
14 caseload that consisted of approximately 40 percent *pro per* cases. Another African-
15 American woman who has worked for years in the Civil Division was once told by an
16 attorney that her hairdo made her look like a slave. A pregnant female attorney once had
17 a male supervisor throw papers at her in anger, and she transferred out of General Civil
18 after lodging an EEO complaint.
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22 77. Examples abound of more favorable treatment given to similarly situated
23 white, male attorneys. When two white males failed to obtain adequate litigation support
24 from a client agency, for example, they received the full support of the U.S. Attorney in
25 quickly remedying the problem. Upon first joining the office, a white male attorney was
26 put on a dual assignment with a white female supervisor. To Daves’ knowledge, no
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1 African-American or Hispanic attorney was ever put on a dual assignment with this
2 particular white female supervisor upon first joining the office.

3
4 78. When a white, male attorney defaulted in a case, Daves was assigned to
5 handle the default so that the attorney's European vacation would not be disrupted. In
6 contrast, when management mistakenly assumed that Daves needed coverage for a
7 hearing in one of his *pro per* prisoner cases, they called Daves while he was overseas on
8 vacation and ordered him back to the office to cover it. Senior white male attorneys had
9 no difficulty receiving assistance from junior attorneys to cover the more routine research
10 or paralegal-type duties that arise in litigation. A senior white male attorney was relieved
11 of a Title VII assignment without being required, as Daves had been in comparable
12 circumstances, to accept a case from the attorney to whom one of his numerous Title VII
13 case was transferred. And so on.

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17 79. White females have also received preferential treatment. The white female
18 awarded the first Civil Appellate Chief position received the opportunity without having
19 to compete for it. Similarly, a while female was awarded supervisory responsibilities
20 which included editing the appellate briefs of senior attorneys without having to compete.
21 This same attorney was also put on a dual assignment with Chief Weidman himself.
22 Within two or three years of joining the office, she was recommended for and received a
23 federal judicial appointment. To Daves' knowledge, no African-American or Hispanic
24 attorney, male or female, has ever had a dual assignment with Chief Weidman.
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1 80. The preferential treatment given to these and other white attorneys has
2 benefited their careers. In addition to what has already been described, several white male
3 attorneys left General Civil to pursue career opportunities in the Criminal Division, and a
4 number of them were subsequently promoted to supervisory positions. One was soon
5 thereafter appointed to a federal magistrate judge position. African-American and
6 Hispanic attorneys who have been the better part of their legal careers working in the
7 Civil Division have not received career advancements even remotely comparable. At
8 least two white male attorneys were, without controversy, provided secretaries who could
9 take dictation. Daves was denied such assistance, without discussion.

13 **Civil Management's Secretive Decision-Making Process**

14 81. The Civil Division is rigidly hierarchical. Line attorneys are permitted
15 almost no voice in the day-to-day management of the office. While line attorneys are
16 commonly asked their views on matters of interest or importance to the DOJ nationwide,
17 the opinions of line attorneys in the Civil Division in Los Angeles on matters specific to
18 the Civil Division are rarely if ever solicited—as far as Daves is aware—and certainly not
19 by the Civil Division's supervisors. Line attorneys like Daves quickly learn that they
20 must either simply accept what their managers say, leave, or risk real retribution if they
21 voice their objections.

22 82. The line attorneys in General Civil handle a wide variety of cases, ranging
23 from small, *pro per* slip-and-falls to large, complex, commercial matters. Daves is
24 informed and believes that managers in the Civil Division assign a disproportionately high

1 number of the smaller cases to African-Americans, Hispanics, and other minorities
2 (except Asians). In contrast, these managers assign a disproportionately high number of
3 the complex, high-exposure cases to white and Asian attorneys.
4

5 83. The six-person management team, with input from the Front Office, is able
6 during their confidential sessions to strategize ways in which to position favored
7 employees for future advancement—for instance, by awarding them special assignments
8 through which they can improve their skills and demonstrate their mettle, or by
9 highlighting their accomplishments to executive officials higher on the chain.
10 Conversely, management is able to consign disfavored employees to professional
11 obscurity—for example, by assigning them cases they cannot reasonably be expected to
12 handle without substantial administrative or other support and then withdrawing that
13 support, or by regularly disparaging them to higher officials. These matters are carefully
14 calculated and not left to chance, notwithstanding management's protestations to the
15 contrary.
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20 84. Accountability is the cornerstone of our justice system, yet managers in the
21 Civil Division of the Los Angeles USAO have long been able to escape it. They make
22 critical career decisions for the line attorneys in the office with the acquiescence of,
23 minimal interference from, or direct instruction from the Front Office. Meaningful
24 managerial oversight from Main Justice is not apparent to line attorneys and seems non-
25 existent.
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1 85. Civil management actively manages present and prospective employees'
2 opportunities such that its personnel decisions are effectively outcome-determinative. The
3 Civil managers meet each week, in private, with a representative from the Front Office,
4 typically the First Assistant. They assign cases. They decide who to recruit and who to
5 hire. They recommend attorneys for promotions.
6

7
8 86. These weekly management meetings are closed-door affairs. They are not
9 open to line attorneys. Management maintains strict confidentiality not only about how it
10 arrives at particular decisions but more fundamentally about the process by which it
11 makes these decisions. Because the management team is so small, even a single person's
12 particular biases may be unduly influential. Under these conditions, discrimination at any
13 stage or by any member corrupts the entire team's decision.
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16 87. It was under these conditions that Civil management was able to manage
17 Daves in a way that effectively prevented his opportunity for advancement, once
18 management determined that that was the course of action it wished to take. The
19 supervisors, Chief Weidman in particular, simply could not see—or perhaps would not
20 allow themselves or others to see—someone like Daves—black, openly gay, assertive on
21 issues related to diversity and gender—representing the office in highly visible cases.
22 Instead, the Civil managers saved such leadership opportunities, most often tied to case
23 assignments, for themselves or assigned them to attorneys with whom they felt a greater
24 affinity. Their views of Daves' abilities, insofar as they were denigrating, were closely
25 tied to deeply ingrained race and gender biases, as were their reactions to Daves'
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1 personality, which often contradicted their expectations of how a black man holding a
2 subordinate position should behave—this, despite Daves’ exceptional track record.

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4 88. Instead of using neutral criteria to make their decisions, the Civil managers
5 have allowed themselves to be improperly influenced by stereotypes. Acting on biases
6 and prejudices, the Civil managers have ignored the facts about Daves’ skills and
7 accomplishments to justify decisions that thwart his development and undermine his
8 career.
9

10 89. Because the Civil managers could always have intervened to replace Daves
11 on any case he might mishandle, the only potential downside to assigning Daves the more
12 substantial, non-discrimination cases he had been requested was that he might
13 conclusively establish himself fully capable of handling those cases, thereby eliminating
14 any credible justification for the obstacles they wished to keep in place.
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17 **Procedural History**

18 90. DOJ has a “no tolerance” policy when it comes to discrimination, which it
19 expresses in strong language: “We, at the Department, are committed to providing a
20 focused EEO program that prevents and eliminates discrimination and ensures equality in
21 the workplace. This is vital to our mission.” The EEO office within EOUSA is charged
22 with ensuring that all branch offices throughout the country comply with EEO mandates.
23 In its mission statement, EEO emphasizes its commitment to “eradicating any
24 discrimination that might exist in the workplace” and, to that laudable end, states outright
25 that it “works diligently to ensure that statutory and legal requirements are met for
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